

Departmental Compensatory Mitigation Programs

Within the Department, the Fish and Wildlife Service (FWS) developed a formal mitigation policy as published on January 23, 1981, in the Federal Register (46 FR 7656). Compensatory mitigation is an integral part of that policy primarily as a means of habitat replacement, enhancement of in-kind habitats, or any combination of these and other impact-mitigating measures. Compensation of impacts can be either on- or off-site. The authorities for this policy span numerous Acts and Executive Orders, including mineral development statutes such as the Mineral Leasing Act of 1920, the Geothermal Steam Act of 1970 and the Surface Mining Control and Reclamation Act of 1977.

To address wetland impact mitigation through a structured program commonly referred to as “wetland banking,” the Department promulgated “Federal Guidance for the Establishment, Use, and Operation of Mitigation Banks” on November 28, 1995, in the Federal Register (60 FR 58605). This policy was developed in cooperation with the Environmental Protection Agency (EPA), Natural Resources Conservation Service (NRCS), and the National Oceanic and Atmospheric Administration (NOAA) to address wetland impact mitigation through a structured program commonly referred to as “wetland banking.” It represents a rather extensive means of onsite, offsite, in-kind and out-of-kind mitigation, as well as in-lieu-fee mitigation arrangements, all designed to compensate unavoidable wetlands losses.